



COMPLUTENSE UNIVERSITY OF MADRID
FACULTY OF SOCIAL WORK

**Unaccompanied Minors and the Principle of the Best Interest of
the Child: A comparison between Sweden and Spain**

Menores no Acompañados/as y el Principio del Interés superior del Niño/a: Una
comparación entre Suecia y España

Bachelor Thesis

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Abstract: Taking into consideration what happened in 2015, where, approximately, 88.300 unaccompanied minors requested asylum in Europe (Eurostat, 2016), it is crucial to understand what could be considered as the proper way to intervene with these children and adolescents.

The information provided by the Convention of the Right of the Child (1989), which describes the principle of the best interest of the child, will be the base of this thesis.

The principal aim is to execute a comparison between how the Swedish and Spanish States intervene during the asylum stage (that includes: identification, age analysis, family reunification, residence permit, and legal guardian) and if both countries are appropriately implementing the best interest of the child while doing the intervention.

Keywords: Principle of the best interest of the child, Unaccompanied Minors, Convention of the Rights of the Child, Asylum process, Sweden vs Spain.

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Resumen: Teniendo en cuenta lo sucedido en el año 2015, donde, aproximadamente, 88.300 menores no acompañados/as solicitaron asilo en Europa (Eurostat, 2016), es crucial comprender qué podría considerarse como la forma adecuada de intervenir con estos niños/as y adolescentes. Para esto, la información proporcionada por la Convención sobre los Derechos del Niño/a (1989), que describe el principio del interés superior del niño/a, será utilizada como base para la realización de esta tesis, cuyo objetivo principal es realizar una comparación entre cómo los Estados sueco y español actúan durante el proceso de asilo (el cual engloba: identificación, análisis de la edad, reunificación familiar, permiso de residencia y tutor legal) y si ambos países empelan de manera apropiada el interés superior del niño/a a la hora de intervenir con los/as mismos/as.

Palabras claves: Principio del interés superior del niño/a, Menores no acompañados/as, Convención de los derechos del niño/a, Proceso de asilo, Suecia vs España.

ABBREVIATIONS

BIC	Best Interest of the Child
CRC	Convention on the Right of the Child
EC	European Commissioner
EMN	European Migration Network
EU	European Union
FGE	Spanish Attorney General
HCH	Homes for Care and Housing
HRW	Human Right Watch
LOEx	Organic Law 4/2000 on the Rights and Freedoms of Aliens in Spain and their Social Integration
NGO	Non-Governmental Organization
NIE	Foreign Identity Number
NIP	Personal Identification Number
SMA	Swedish Migration Agency
STC	Save The Children
UASC	Unaccompanied And Separated Children
UM	Unaccompanied Minor
UMR	Unaccompanied Minor Registry
UN	United Nations
UNHCR	The office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

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1. INTRODUCTION

The present study is an exhaustive bibliography review in which the main topic is to discover if Sweden and Spain follow the principle of BIC to intervene with unaccompanied minors. Simultaneously, a comparison will be made between the actions that has been taken by both countries.

These subjects have been selected due to numerous study visits to so-called HCH establishments in Stockholm, where UM are living. Attending meetings with social workers, located at Haninge municipality, also in Stockholm, and who are specialized in UM that taught me about the situation.

Besides, my own experience doing an internship in a Youth Centre for adolescents between the ages of 12 and 19 in Jordbro, Stockholm. A small city where 21% of its population are immigrants (Graham, 2018).

Furthermore, this matter has been and still is a current global issue. There is a considerable need to get more knowledge about how to properly work with UM to guarantee their safety, wellbeing, and rights, as this group faces the constant vulnerability of their equity (Çelikaksoy & Wadensjö, 2017) and being "invisible" to society (STC, 2016).

Considering what has been said in the last paragraph, the main objective of this study is to analyse if Sweden and Spain follow the Principle of BIC when they intervene with UM during the asylum process that contains: UM identification, age analysis, family reunification or deportation, residence permit, and legal guardian, whilst, at the same time, a comparison will be done within those terms and countries, creating a secondary purpose.

To achieve the two aims mentioned, this essay will start by describing the method that was used to gather information, followed up by the theoretical framework that will be divided into two sections: in the first one, questions such as, why UM decide to leave their countries? why UM decide to go to Sweden or Spain? how UM arrive in those countries? And how many UM are in Sweden and Spain?, will be answered to get a better understanding of what they go through, and, in the second part, there will be a description of the principle of BIC and the rights mentioned in the CRC (1989). Additionally, the results will be presented, showing

the intervention made by Sweden and Spain in the asylum process. Furthermore, throughout the discussion a comparison will be made to discover if the intervention made by those countries follow the principle of BIC described in the theoretical framework.

It is going to be completed with a conclusion obtained by the information acquired during this thesis.

2. METHOD

The method used in this study is based on meticulous research, examining articles, books, reports, and statistics published by EC, EMN, Europol, Eurostat, FGE, HRW, SMA, STC, UNHCR, y UNICEF.

Additionally, using ProQuest Social Sciences, a database provided by Stockholm University and Dialnet by Complutense University of Madrid, besides, Google Scholar.

Furthermore, the keywords and sentences used to carry out the research were: Unaccompanied minors in Sweden, Unaccompanied minors in Sweden process, Unaccompanied minors in Sweden asylum process, Refugees in Europe, The principle of the Best Interest of the Child, EU-Turkey Agreement, *Menores no acompañados en España*, *Menores Extranjeros no acompañados en España*, *MENA*, and *refugiados*,

Moreover, during the process of reading the discovered articles, the ones being mentioned within those were also used during this research.

Finally, every article, book, report, and statistic used in this thesis has been filtered by online format and languages (English and Spanish).

3. THEORETICAL FRAMEWORK

3.1. Unaccompanied Minors

Defined by the UNHCR, (1997) as:

A person who is under the age of eighteen, unless, under the law applicable to the child, majority is, attained earlier and who is separated from both parents and is not being cared for by an adult who by law or custom has responsibility to do so. (p.1)

3.1.1. Why UM decide to leave?

Based on a report made by (UNICEF, 2009), UM decide to leave their countries due to poverty, running away from armed conflict, family conflict, and to achieve better social and cultural expectations¹. Their physical safety is at risk in the countries of origin, as well as, their rights (UNHCR, 2016). Other UM leave to save their own lives, avoid getting into a forced marriage or slavery (STC, 2016), besides, retaliation created by their sexual orientation and religion. They leave looking for a place where they can fulfil their dreams (STC, 2018), and they make the decision when an unexpected circumstance appears, for example, the death of a parent (UNICEF, 2009).

3.1.2. Why UM decide to go to Sweden or Spain?

UM tend to choose Sweden as their final destination since they perceive it will bring them education, validation of their rights and better economic opportunities (UNHCR, 2016), besides, being aware of the fact that Sweden has historically been focused on child-friendly policies (Çelikaksoy & Wadensjö, 2017).

Meanwhile, Spain is considered as a transitional country or a start country, as for some UM is the first contact they have with Europe. They use Spain as a way to get to their final destination (Alcolado Chico, 2018).

¹ Such as jobs, earn money and expectations related to economy benefits.

3.1.3. How UM arrive in Sweden or Spain?

It is common for UM to travel to Sweden with smugglers and use information, such as new routes, given by them (UNHCR, 2016), whereas the trip to Spain is mostly done in small boats driven by mafia members who transport them into the Canary Islands or the peninsula. Other ways are also hidden under big trucks, or illegally crossing the border in Ceuta and Melilla (Lázaro González, 2007). Sadly, getting into those small boats is not only dangerous but expensive, as it costs them around 1.000 – 1.800€ without taking into account the bus price, and other expenses, to get to the departure place (UNICEF, 2009).

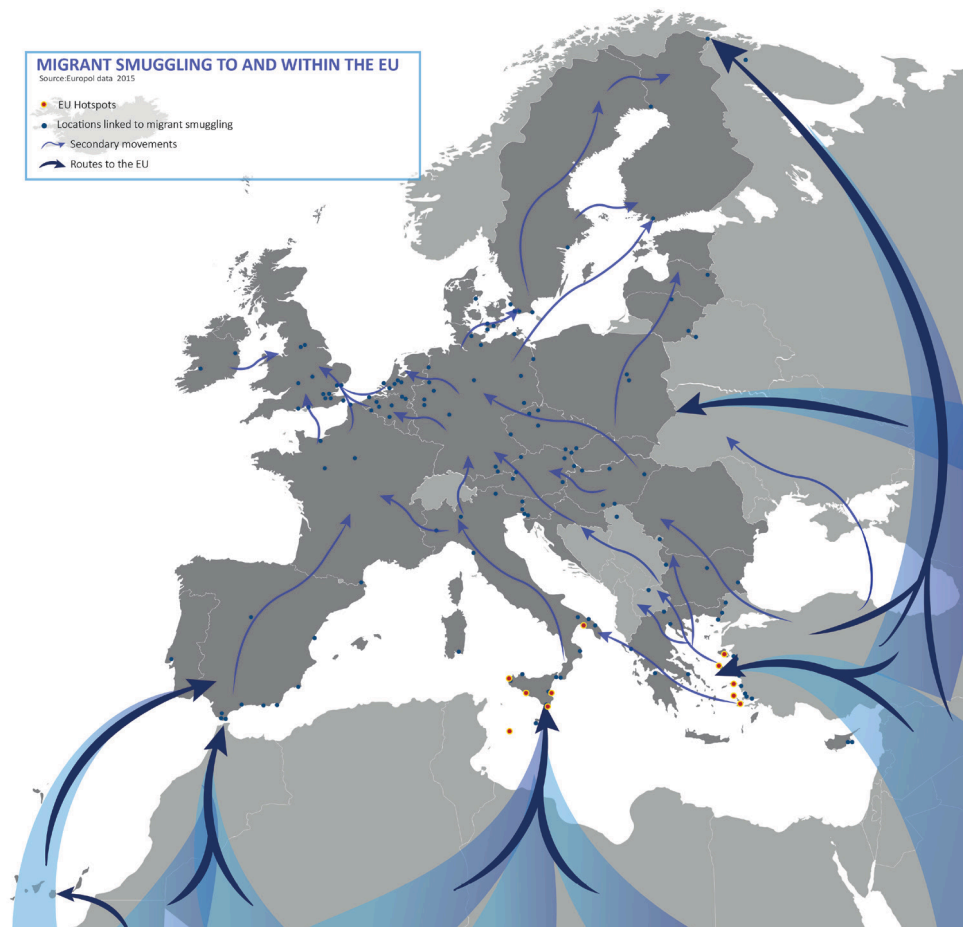


Figure 1. Migrants Smuggling to and within the EU. Retrieved from: Europol, 2016, issue February: <https://www.europol.europa.eu/publications-documents/migrant-smuggling-in-eu>

3.1.3.1. Vulnerability during the trip

Based on a report made by (UNHCR, 2016):

UM are at risk of manipulation, abuse and trafficking. [...] including dangerous means of transportation, sexual abuse and exploitation,

detention (often with adults), deprivation of food and water, and being beaten by smugglers or even by police and/or border officers. UNHCR and partners have also received increasing reports of UASC engaging in survival sex practices, to sustain their living and to pay for potential onward movement. [...] They had experienced or witnessed severe protection incidents along the route, including death of fellow travelers as well as a long and exhausting journey. (p.3)

3.1.4. Statistics and numbers of UM in Sweden and Spain

In 2015, 88.300 requests were made by UM, 40% of those solicited asylum ²in Sweden, and 51% of them were from Afghanistan (Eurostat, 2016).

Taking into consideration the reports made by the SMA in 2015 and 2016, Sweden went from receiving 7.049 UM in 2014 to 35.369 in 2015. An increase of 28.320 petitions.

In 2016, the amount of UM that arrived in Sweden declined, and they only received 2.199 asylum applications (SMA, 2017). The indicated is due to the EU-Turkey agreement, approved the 25th of November of 2015, that stated:

All new irregular migrants crossing from Turkey to the Greek islands as of 20 March 2016 will be returned to Turkey. [...] Turkey will take any necessary measures to prevent new sea or land routes for irregular migration opening from Turkey to the EU. [...] People who do not have a right to international protection will be immediately returned to Turkey. (EC, 2016, p.1)

Therefore, in 2017 the number was of 1.336, In 2018, 944, and in 2019, it decreased to 902 asylum requests (SMA, 2018, 2019, 2020).

² The only way to register, recognize and regulate UM in Sweden is by their asylum requests (EMN Sweden, 2017), meanwhile, in Spain, it is not necessary to apply for asylum to regulate UM situation, due to the fact that minors have the right to stay in Spain legally until they turn 18 (Vinaixa Miquel, 2019). This is the reason why cases in Sweden are counted by asylum petitions and in Spain by how many UM are warned by the public administration.

The situation is completely different in Spain, where in 2014 there were 223 UM that arrived by small boats and a total of 3.660 warned by the administration. In 2015 there was a total of 3.341 registered UM being warned by the administration, 414 of those came by small boats, which is 85,65% more than the year before. This number has increased considerably since 2016, where there was a total of 3.997 UM being warned by the administration, 19,63% raise, with 588 children and adolescents arriving by small boats (42,2% more than in 2015). In 2017, 2.345 UM travelled by small boats, which is 398% higher than in 2016 and 6.414 UM were being warned by the administration, 60,47% more than the year before. Lastly, in 2018, the number increased, even more, 7.026 UM used small boats to travel to Spain, 199,61% of growth, 13.796 children and adolescents were being warned by the administration, 115% rise (FGE, 2015, 2016, 2017, 2018, 2019).

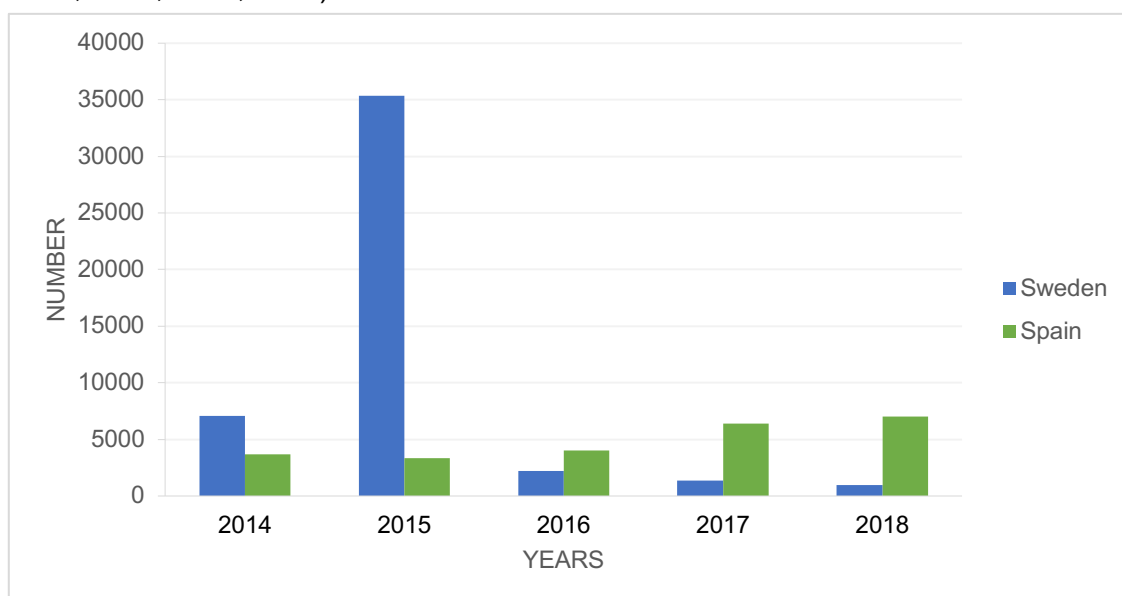


Figure 2. UM in Sweden and Spain. *Note:* It shows the number of UM that requested asylum in Sweden and how many UM were warned by the public administration in Spain. Retrieved from: data provided by SMA (2015, 2016, 2017, 2018, 2019) and FGE (2015, 2016, 2017, 2018, 2019).

Unfortunately, the real number of UM is impossible to know because not all children and adolescents request asylum or are identified by the authorities. In Sweden, the number of UM in irregular situations³ is increasing (EMN Sweden, 2017) and in Spain, the number sent by autonomous regions do not follow the same criteria. In some other cases, the data is not available (UNICEF, 2009), besides, only recognising the number of UM that have been distinguish or

³ Without identity document or resident permit.

established as underage by the public administration (STC, 2018). Further to this, even the FGE (2015, 2016, 2017, 2018, 2019) has exposed the difficulty of collecting yearly data concerning unaccompanied minors arriving in Spain.

3.2. Best Interest of the Child⁴

The Principle of BIC was shaped in the CRC (1989) and is portrayed in the art. 3 as:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision. (p.2)

The CRC also starts by exposing in the Art. 2.1 the fact that the State has a responsibility to make sure the minors' rights are carried out properly without discrimination regardless of their race, sex, origin, nationality, or any other way of prejudice. If there is an unfairness treatment towards the child or adolescent, the State shall take measures to protect their right from injustice behaviour "or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members" (art. 2.2, CRC, 1989, p.2).

⁴ All the Articles mentioned in this section are from the CRC (1989).

Moreover, the state has to let the child know they have the right to express their point of view freely (art. 12.1). This is also represented in the art.13.1⁵. Considering that, the child has to be given the chance to be heard in any type and part of the process, this could be done directly, through a representative or an appropriate body (art. 12.3). Nonetheless, the child has the right to keep their identity to themselves (Art. 8.1), however, the State has the duty to make sure that asylum seekers or refugee children are well-taking care of, receiving the proper protection and assistance (art. 22.1).

Additionally, the State has the responsibility to protect the child from all types of sexual abuse and exploitation (art. 34 and 36), plus, the obligation to protect the child affected by armed conflicts (art. 38.4), and, besides, taking measures to prevent those situations, as well as, abduction, human trafficking or other dangerous conditions (art. 35), including traditional prejudicial health practices (art.24.3). Following up, it is, indeed, the State's duty to protect the child in every type of "physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment [...] while in the care of parent(s), legal guardian(s) or any other person who has the care of the child" (art. 19.1, CRC, 1989, p.5).

In other terms, when a child has a legal guardian, they have the obligation to make sure the BIC is being used properly and have that as their basic concern (art. 18.1). The information, requirements, and rights they have to keep in mind are handled in by the State (art. 18.2).

Furthermore, if the child was separated from their parent(s) or arrived alone, the State, jointly with UN and other organisations, should cooperate to find the parent(s) or other family members to obtain details about them that are essential for reunification, nevertheless, in those cases where the parents or any family member cannot be found, the child is provided with the same care as any other suffering from the same circumstances⁶ (art. 22.2). In instances where the parent(s) or family members are found, the child has the right to enter or leave a Country to reunite with their family. This process is the State's responsibility and it has to be done "in a positive, humane and expeditious manner" (CRC, 1989,

⁵ Right to freedom of expression.

⁶ Child permanently or temporarily deprived of his or her family environment.

p.3). They also have to guarantee that, once the reunification request has been submitted, no consequences will come for the applicant or their family members (art. 10.1).

This convention has been signed by all EU countries and it is used as a guideline when creating new laws, interventions, administrative decisions, and every action that involves and affects a child (Çelikaksoy & Wadensjö, 2016).

4. RESULTS

4.1. Intervention made by Sweden and/or Spain

As a consequence of the high number of UM that have arrived in Sweden in 2015, there have been long delays during the asylum process (Çelikaksoy & Wadensjö, 2017) and a new Temporary act was approved the 20th July, 2016, “in line with minimum standards under EU law” (Ministry of Justice, 2019, p.1), which means that all UM that arrived before the 24th of November of 2015, are evaluated by the Aliens Act, after that date, the State started following the new act (EMN Sweden, 2017)⁷.

Focusing on the local intervention, there is a lack of information regarding the accomplishments and fulfilments made by the municipalities in Sweden considering their intervention with UM (Çelikaksoy & Wadensjö, 2017).

On the other side, Spain is being criticized for not providing UM information about their rights, for example, the fact that they can request asylum (Requejo Isidro, 2017).

4.1.1. Asylum Process

As mentioned by Çelikaksoy and Wadensjö (2017), in Sweden, the asylum process wants to identify UM, analyse the age of children and adolescents, reunite information about their families and circumstances, and based on those points, UM will be evaluated to be granted asylum. The SMA is in charge of receiving and making decisions on the asylum and designating UM to their municipalities.

There is a need of clarifying the roles and the information that is provided to UM about the available help, which could promote UM’s participation (Costa, 2015).

Additionally, when the asylum has been rejected, some UM decide to leave their accommodation and live irregularly in Sweden or travel to another country. That would be the case of 35% of children and adolescents from Algeria and 27% from

⁷ The changes and how this affect UM are explained in the “resident permit” section.

Morocco, since 2010 to 2015, and regrettably, only a few are found. Similarly, is the case of Spain, where UM escape their accommodation place due to the fact that the public administration does not provide them with the education they desire and does not let them move to a different autonomous region or leave the country to get reunited with family members. Those UM end up homeless and without any protection (STC, 2016). A total of 2.118 children and adolescents abandoned their accommodation between 2016 and 2017 (FGE, 2018, 2019).

Taking into consideration the European context, STC (2016) led to the conclusion that, nor the Spanish public administration or the autonomous regions, properly protect UM.

4.1.1.1. Identification

Right when UM arrive in Sweden, there is an initial assessment where they do a quick investigation to separate minors from adults. If there is any doubt left about the age, a more in-depth study is conducted (Çelikaksoy & Wadensjö, 2016)

In Spain, Cabedo Mallol (2007) expressed that normally the authorities or the NGOs are the ones that detect UM. Once they identify whether it is a child or an adult, or if the age is not correctly established, they must inform the Child Protection Services and the Public Prosecutor to continue the investigation.

The Public Prosecutor and the Child Protection Services follow the Framework Protocol on certain actions in relation to foreign UM (13th October, 2014), which explain the intervention that has to be made.

Once an UM is detected, the authorities have to check the UMR. If the minor is not enrolled, the Provincial Brigade of Immigration and Borders will proceed to assign a NIE linked to the NIP. If the UM is already registered, there is no need to do a further investigation as all the information is already on their file (Framework Protocol on certain actions in relation to foreign UM, 13th October, 2014)

4.1.1.2. Age analysis

In the art. 35.3 of the LOEx is explained that, besides informing the Child Protection Services about having found a possible underage child, the Public Prosecutor has to be notified to analyse UM's age (LOEx 4/2000, 11th of January). It is the Public Prosecutor's responsibility to determine if the person is a minor or an adult. Usually, it resorts to radiometric methods, such as Greulich-Pyle or Skeletal age estimation methods (FGE, 2017). The same resources are used in Sweden to examine UM's age (Çelikaksoy & Wadensjö, 2016).

Fernández-Ramos (2019) said that those analysis are a form of institutional abuse, as they can determine that the UM is an adult and could provoke their deportation, adding the fact that these tests are intrusive, can even have side effects (Vinaixa Miquel, 2019) and a two years margin of error (Cabedo Mallol, 2007).

Nonetheless, during this process in Sweden, it is a right of the UM to be accompanied by an adult. It has also been demonstrated in a study made by Lundberg and Dahlquist (2012), that this right is being fulfilled as all participants reported to have had their legal guardian or an adult with them. Furthermore, the SMA selects a lawyer to every child and adolescent (Çelikaksoy & Wadensjö, 2017).

Pitifully, that is not the case in Spain during the age determination analysis. UM do not have an adult or a Lawyer to inform them about their rights and provide them with information (González, 2018). The circumstances mentioned before has also been stated by STC (2016), not only during the age analysis but when they are trying to express their opinion, as well as, reporting a crime or a violation of their rights, the lawyer or legal guardian is absent.

Furthermore, based on Framework Protocol on certain actions in relation to foreign UM (2014), when children and adolescents have their original passport with them, it is not necessary to do those types of medical analysis. This statement goes against what has been explained during the 2019 report made by the FGE. It says that up until 2018, the Public Prosecutor requested the Greulich-Pyle analysis to, mostly, every UM case. Now, only doubtful cases are using this type of analysis (FGE, 2019).

4.1.1.3. Family Reunification / Deportation

The situation experienced by UM in Sweden is based on disinformation. They are not aware of the fact that the State is responsible for searching their families to provide the reunification (Lundberg & Dahlquist, 2012).

Unfortunately, the Temporary act limits the right of family reunification, as it only provides this option to UM with refugee status (EMN Sweden, 2017). Besides, a requirement to be able to apply for the reunification is to be a minor (Costa, 2015).

Moreover, in those cases where the UM is deported, a responsible adult has to travel with them to make sure someone is waiting for the child in the country of origin (Çelikaksoy & Wadensjö, 2017).

Cases in Spain are utterly different. The reunification is done in the UM's country of origin (UNICEF, 2009) and the public administration does not actively promote the search of their family members (STC, 2016).

In Spain, the LOEx has legalized what it is popularly known as "hot returns". It happens in the Ceuta and Melilla borders, which separates Spain from Morocco, and it describes the act of deporting someone the moment they are in Spanish territories, without a study or a background investigation, and it has caused the return of many minors to the other side of the border (STC, 2016).

4.1.1.4. Residence Permit

Because of the delays in Sweden, it takes, approximately, about a year and 10 months to receive an answer about the residence permit (Lundberg & Dahlquist, 2012). Additionally, since the Temporary act was submitted, permits are no longer permanent, unless UM can prove they can support themselves (EMN Sweden, 2017). The same report stated that:

Refugees are issued a temporary residence permit of three years, whereas those found to be in need of subsidiary protection are issued a temporary residence permit of thirteen months. If the need for international protection remains after the expiration of the temporary residence permit, a new temporary residence permit can be granted. (p.12)

Furthermore, this process differs in age. If an UM is under 16 years old, they are normally granted a 12 months permit but if the child is over 17 years old, they are returned (EMN Sweden, 2017).

The situation in Spain is not that different from what has been mentioned before, the only contrast is that in Spain the public administration will try to deport UM to their country of origin to be reunited with their family or to the Child Protection Services to take care of them and be their guardians. In those cases where this is impossible to fulfil or the child is at risk in their native country, the public administration decides to let UM stay in Spain (LOEx 4/2000, 11th of January). That is when some Child Protection Services in Spain wait around nine months to finally request the resident permit for UM, while others have limitless waiting time. After requesting the permit, they have to hold on for other 15 to 25 months to acquire the residence (STC, 2004). However, even when UM have their permit, the public administration is still able to deport them based on what written in the art 35.8 (LOEx 4/2000, 11th of January).

What was mentioned before is considered another reason why UM decide to leave their accommodation and live in secrecy, in an irregular situation (Lázaro González, 2007). This shows how different UM are treated in Spain, as they have to wait until they are under the public administration “wing”⁸ to then be able to request the permit and, even then, they can get deported (UNICEF, 2009).

4.1.1.5. Legal Guardian

The Municipality’s Chief Guardian Committee is in charge of choosing the legal guardian for UM (Çelikaksoy & Wadensjö, 2017). It has been a right for them in Sweden since 2005 (Çelikaksoy & Wadensjö, 2016)

Defined by Wimelius et al. (2017): “A legal guardian is a layperson who is paid a monthly fee for looking after asylum-seeking children’s interests. When a child receives a permanent residence permit, the municipality appoints a custodian” (p.3).

⁸ They have to wait to be warded by the public administration first.

In the words of Çelikaksoy and Wadensjö (2016):

The guardian gives power of attorney to a public counsel, who represents the child upon their application for asylum. A special custodian is appointed to a child whose application for asylum has been granted. The appointment of guardian/special custodian ends when the child turns 18. [...] The Chief Guardian Committee has the important task of inspecting the guardian's work. They are tasked with several duties and varying complaints are often made aimed at their work. (p.13)

The legal guardian should be able to have “good listening skills, to have life experience and knowledge about Sweden” (Costa, 2015, p.5).

In the study made by Lundberg and Dahlquist (2012), UM described their legal guardians as important social support. Nevertheless, there are delays in appointments⁹ and those affect the child directly, as they do not get the information needed, support, or access to education (Çelikaksoy & Wadensjö, 2017). Besides, there is no way for the Swedish State to supervise the legal guardian’s intervention or track their appointments with the UM. Moreover, there is a waiting period for UM to get assigned a legal guardian by the municipalities (HRW, 2016).

The conditions in Spain are quite distinct, as it is not a person. Most of the time, the public administration is the UM’s legal guardian. This form of guardianship was thought of as a short term solution due to the fact that it only offers to sustain basic needs and does not fulfil the UM’s rights (UNICEF, 2009).

⁹ Appointments between the legal guardian and children or adolescents.

5. DISCUSSION¹⁰

Having explained the principle of BIC and what are the procedures during the asylum process both in Spain and Sweden, a comparison will be made between the described rights of the child and if what is being done, which is described in the results, goes according to what these countries signed.

Starting with the art. 22.1 concerning the responsibility of the State, that it has to take care of refugees and asylum seekers, is not correctly being put to use, neither in Sweden nor Spain. There are long delays for the asylum seekers that cause a lack of information needed. In cases of newly arrived UM, the absence of knowledge can even get to the point of them not being aware they can request asylum; some are not properly identified as refugee or asylum seekers, which is what occurs in Spain with the “hot returns”, where it is impossible to identify who is underage and fits into these categories. During this “hot returns” there is no possibility to do a background check. Additionally, the art. 38.4 reflects the obligation of taking care of children affected by armed conflicts, which is also not being suitably done in Spain because of what has been mentioned before. Differently, there have been no reports of the latest not being granted in Sweden.

In the art. 19.1, 34, 35 and 36, regarding the need to protect the child against all forms of abuse, exploitation, abduction, human trafficking, violence, negligent treatment, and other dangerous conditions, when UM decide to leave their accommodation, even if it is considered a “voluntary” decision, their vulnerability increases, as they are on the stress, at risk of being abused or suffering the same circumstances explained in the section “Vulnerabilities during the trip”. Considering these children and adolescents are hardly ever found, the Swedish and Spanish government are going against what has been signed.

Moreover, one of the first articles, art.2.1, describes the State's responsibility to ensure the child and their rights are not suffering from any form of discrimination. Sadly, not even that is completely granted by Spain, as UM have bigger difficulties at the time to request and obtain the residence permit or even choose

¹⁰ All the articles mentioned in this section are from CRC (1989). See “The principle of the Best Interest of the Child” segment.

an education. This last item mentioned is restricted since the State has a limited amount of options for UM to pick from (STC, 2016).

The art. 12.1, 12.3 and 13.1, talk about the child's right to express their opinion, freedom of expression, and is represented by an appropriate body. It has been found to be correctly done in Sweden. Children and adolescents have their legal guardian and a lawyer with them during the entire asylum process. Meanwhile, in Spain, there is a completely different outcome. UM are not properly warned by the public administration nor do they have a lawyer to use when they need to report a crime or a violation of their rights, besides, their legal guardian nor any adult is with them during the age analysis.

In addition to what has been discussed before, it is also their right to be protected against prejudicial health practices (art. 24.3), which is violated by the methods used in Sweden and Spain to determine their age. Those methods are intrusive, not completely accurate, as they have a big margin of error that can negatively affect UM's life, and there are possible side effects, that can position the child in a dangerous situation.

Furthermore, the right to be reunited with UM's family members by entering or leaving a country (Art.10.1) is equally disrupted. The new law (Temporary act) in Sweden has developed restrictions towards this right, nowadays there are more conditions needed to achieve it. In Spain, family reunification is what the public administration aims for, although it is done in the UM's country of origin. It limits the possibilities for UM to get reunited with their family in other countries or in Spain itself. Even when they have a family member in a different autonomous region, the public administration does not allow it.

Legal guardians have the obligation to ensure the BIC is being accurately used (art. 18.1). In Spain this is assigned to the public administrations' jurisdiction and that manifest the breaking of this right, as they are the ones transgressing it. An example could be that, even when UM have a residence permit, the public administration can deport them to their country of origin. Stating that for the BIC, if the family reunification can be done after getting the permit, the State will proceed with this course of action. It provides no security to UM. Besides, this type of guardianship was not meant to be a long-term solution as it covers only

UM basic needs. It is the opposite case in Sweden. The results prove that legal guardians are around the child, aware and even UM described them as an important support, yet some delays in the appointments affect them.

The constant reminder that there is an absence of information, and clearance in the roles the professionals have, is against the art. 18.2, that declares the State is in charge of providing details about the child's rights and requirements. Both in Sweden and Spain, UM are insufficiently educated about what they can request and their right, for example, in Sweden some children and adolescents do not even know they have the right to demand the State to look for their families. In Spain the situation is similar, as the public state is not proactive in this matter.

Lastly, the State is responsible to oversee if the intervention executed by institutions, services, and facilities follows the standards established (art. 3.3). It has been demonstrated that none of the countries applied this, as in Sweden there is a need for supervision from the State to the municipalities and legal guardians, and in Spain the institutions do not follow the law accordingly.

6. CONCLUSION

The BIC is a principle that, because it is broad and does not introduce clear guidelines, is prone to be used by the States Parties' subjective opinions. For example, the public administration in Spain, in the art. 35 of the LOEx considers that the BIC is to be reunited with their family in the country of origin. Personally, that determination makes no sense as UM run away from their country, mostly, for their safety. This situation has been reported by STC (2004, 2016, 2018) and UNICEF (2009).

Moreover, the disorganization during the procedure in Spain is explicit. Even when the Framework Protocol on certain actions in relation to foreign UM (2014) states that when the child has legal documentation with them it is not necessary to do the age analysis, however, the Public prosecutor and Child protection Services were doing the opposite, going against what has been stipulated by law.

On the other side, Sweden has always been talked about as a country that provides good security and social welfare to their society in general but to the highest degree to children and adolescents. Even from a European and UM's point of view, it is considered one of the most supportive countries, which is why I was surprised by the findings during the process of writing this essay. It is true that compared to Spain, it has better intervention, mostly on the representative assistance during the asylum process, but even that can improve. Still, the Temporary act has only downsized the outcome. The effects of this temporary law have decreased the quality of their intervention and procedure.

Furthermore, based on what has been shown in the discussion section, both countries should look at what is actually being done and how inaccurate it is to the BIC. UM decide to leave their countries due to a numerous reason, but to sum up, their desire is to get a better life. They choose Sweden to get a better education, basic rights, and opportunities. Spain, even when it is considered as a transitional country, still represents the European idea of how things should work. Instead, they get discriminated by the States, some of their rights are not validated nor are they properly taking care of, encountering disinformation, uncertainty, not able to express their opinions, deportation to their country of

origin, and in a few cases, their only option is to leave their accommodation to continue their route to a different country or live on the streets.

Ultimately, and as a recommendation, the BIC should have a more explicit guideline, that could not be changed or interpreted by the States Parties' subjective opinions, as UM suffer more than enough in their country of origin and during the route to then get to a State that does not protect them in the way that they have the right to.

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